Filed 5/3/10 In re Christopher M. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re CHRISTOPHER M., a Person Coming Under the Juvenile Court Law.	B216851 (Los Angeles County Super. Ct. No. YJ32816)
THE PEOPLE, Plaintiff and Respondent, v. CHRISTOPHER M., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Stephanie M. Davis, Referee. Reversed and Remanded with directions.

Law Offices of Esther R. Sorkin and Esther R. Sorkin for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Lance E. Winters and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Christopher M. appeals from the order sustaining a petition filed under Welfare and Institution's Code section 602. He contends that the juvenile court erred in withdrawing its approval of a disposition in which he admitted the allegations of an amended count of the petition charging petty theft, but did not factually admit his guilt. We conclude that the juvenile court failed to exercise its discretion in rejecting the disposition. We enter a limited reversal and remand for the court to exercise its discretion.

BACKGROUND

The petition under Welfare and Institutions Code section 602 alleged that appellant committed the felony offense of grand theft person, in violation of Penal Code section 487, subdivision (c). Appellant initially denied the allegations of the petition, but on the date set for the adjudication hearing, the court announced that the petition had been amended to allege a second count, petty theft in violation of Penal Code section 484. The court stated its understanding that appellant "want[ed] to admit committing that crime," and asked appellant if that was what he wanted to do. Appellant said that it was.

The court took waivers of appellants' rights and advised him of the consequences of his admission. Although the court did not specifically so advise appellant, the disposition was authorized by Welfare and Institutions Code section 725, subdivision (a), which permits the court to place a minor on probation for up to six months without declaring the minor to be a ward of the court. If the minor fails to comply with the conditions of probation, the court may adjudge the minor a ward of the court.[1]

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[1] Welfare and Institutions Code section 725 provides in relevant part:

Here, the court explained to appellant that he would be placed on probation for six months and that, if he successfully completed probation, the charge would be dismissed. On the other hand, if he failed to successfully complete his probation, the court would hold a disposition hearing at which he could be sent to a foster home, group home, or secure placement. Appellant stated that he understood.

The court then asked if appellant was entering the admission because he "did commit this crime?" Appellant said that he was. The court inquired: "Do you admit that on January 20th, 2009, you committed the crime of petty theft?" Appellant answered, "Yes, Ma'am." His attorney joined in the waivers and stipulated to a factual basis. The prosecution also joined.

The court then dismissed the charge of grand theft person and made the findings required by California Rules of Court, rule 5.778(f).[2] The court stated that

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"After receiving and considering the evidence on the proper disposition of the case, the court may enter judgment as follows:

"(a) If the court has found that the minor is a person described by Section . . . 602, by reason of the commission of an offense other than any of the offenses set forth in Section 654.3, it may, without adjudging the minor a ward of the court, place the minor on probation, under the supervision of the probation officer, for a period not to exceed six months. The minor's probation shall include the conditions required in Section 729.2 except in any case in which the court makes a finding and states on the record its reasons that any of those conditions would be inappropriate. . . . If the minor fails to comply with the conditions of probation imposed, the court may order and adjudge the minor to be a ward of the court."

[2] California Rules of Court, rule 5.778(f) provides:

"On an admission or plea of no contest, the court must make the following findings noted in the minutes of the court:

"(1) Notice has been given as required by law;

"(2) The birthdate and county of residence of the child;

"(3) The child has knowingly and intelligently waived the right to a hearing on the issues by the court, the right to confront and cross-examine adverse witnesses and to

it had read and considered the probation report, and placed appellant on probation pursuant to Welfare and Institutions Code section 725, subdivision (a), subject to various conditions. Following appellant's acknowledgement that he understood the conditions and had no questions, his attorney stated: "Your Honor, Chris [appellant] wanted me to let the court know and the District Attorney – I know the complaining witness says otherwise. He's accepting this offer because he believes it's in his best interest to do so but that his statement in the police report as well as what he maintains today is that he was just there and that he was at the wrong place at the wrong time."

The court responded: "I wish you would have let the court know that before I took the admission because I don't take admissions from minors . . . who are admitting because it's in their best interest. *People v. West* does not apply in juvenile court. If he thinks he didn't do anything, then he probably needs to have a trial. And so that the record is clear, I asked a very specific question when I asked . . . were you willing to admit to this crime. I asked . . . are you admitting to the crime because you committed it. And you answered, 'yes.' So let me ask you the

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use the process of the court to compel the attendance of witnesses on the child's behalf, and the right to assert the privilege against self-incrimination;

"(4) The child understands the nature of the conduct alleged in the petition and the possible consequences of an admission or plea of no contest;

"(5) The admission or plea of no contest is freely and voluntarily made;

"(6) There is a factual basis for the admission or plea of no contest;

"(7) Those allegations of the petition as admitted are true as alleged;

"(8) The child is described by section 601 or 602; and

"(9) In a section 602 matter, the degree of the offense and whether it would be a misdemeanor or felony had the offense been committed by an adult. If any offense may be found to be either a felony or misdemeanor, the court must consider which description applies and expressly declare on the record that it has made such consideration and must state its determination as to whether the offense is a misdemeanor or a felony. These determinations may be deferred until the disposition hearing."

question again. Are you admitting to this crime because you committed it?" Appellant responded, "No, Ma'am." The court stated, "Then we're having a trial. . . . I do not do that. That is not what this court is about. I do not accept plea bargains because somebody believes that it's in their best interest to say they committed a crime. The minors have to actually admit that they committed a crime or be proven by facts and witnesses that they committed the crime. This is not adult court."

Following the court's rejection of the disposition, the matter immediately proceeded to adjudication. K.A. testified that on January 20, 2009, as he was on his way home from school, appellant and two other boys approached him. One of the boys (not appellant) asked to use his cell phone to call his mother. K.A. handed the phone to the boy, and the boy started walking away, dialing it. Appellant walked with him, and then appellant and the boy with the phone began to run. K.A. chased them. The boy with the phone passed it to appellant, who passed it back, and they continued to flee, ultimately outrunning K.A.

Eden Palacio, a detective with the Culver City Police Department, testified that after a waiver of his *Miranda* rights, appellant told the detective that he was with Anthony L. and another boy. Anthony said that there was a boy on the foot bridge with a cell phone. Anthony asked whether either of his companions wanted it. Appellant did not answer, but approached the boy with Anthony and said, "He wants to talk to you." Anthony asked to use the phone to call his mother. When he ran away with the phone, he passed it to appellant, who passed it back because he did not want it.

The juvenile court sustained count 1 of the petition alleging felony grand theft person, and dismissed count 2, the amended charge of petty theft. The court declared appellant a ward of the court and placed him home on probation.

DISCUSSION

In California criminal procedure, the term, "*People v. West* plea" (*People v. West* (1970) 3 Cal.3d 595), generally refers to a defendant's plea of guilty that is not accompanied by a factual admission of guilt. A criminal defendant may enter such a guilty plea, but the court is not required to accept it. (*North Carolina v. Alford* (1970) 400 U.S. 25, 38, fn. 11 (*Alford*) ["Our holding [permitting a defendant to plead guilty while maintaining innocence] does not mean that a trial judge must accept every constitutionally valid guilty plea merely because a defendant wishes so to plead. A criminal defendant does not have an absolute right under the Constitution to have his guilty plea accepted by the court"]; *People v. Snyder* (1989) 208 Cal.App.3d 1141, 1146-1147 [same, citing *Alford*].)

In this juvenile delinquency proceeding, appellant contends that the juvenile court had discretion to accept his admission to the allegations of the petition coupled with a claim of innocence, and erred in failing to do so because: (1) the court's comment that "*People v. West* does not apply in juvenile court" disclosed an erroneous belief that the court did not have the discretion to accept the admission unless appellant admitted factual guilt, or (2) the court erroneously failed to exercise its discretion to accept the admission and instead applied a blanket rule of not accepting admissions coupled with a claim of innocence in delinquency cases. We disagree with the first point, but agree with the second.

As to the first point, we do not interpret the court's comment, "*People v. West* does not apply in juvenile court," to mean that the court believed that it had no discretion to accept appellant's admission. Rather, in context, the court was expressing its belief that admissions without an admission of factual guilt are not appropriate in delinquency proceedings as compared to adult criminal court. In

other words, the court was not saying that it *could* not accept appellant's admission; it was saying that it *would* not.

As to the second point, we find that the court failed to exercise its discretion and erroneously set aside the disposition. California Rules of Court, rule 5.778, prescribes the procedures for commencing a Welfare and Institutions Code section 602 proceeding. With respect to the minor's response to the allegations of the petition, the rule contemplates an admission, a denial, or, with the approval of the court, a plea of no contest. (Cal. Rules of Court, rule 5.778(c) & (e).)[3] Although

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[3] California Rules of Court, rule 5.778 provides in full:

"(a) Petition read and explained (§ 700).

"At the beginning of the jurisdiction hearing, the petition must be read to those present. On request of the child, or the parent, guardian, or adult relative, the court must explain the meaning and contents of the petition, the nature of the hearing, the procedures of the hearing, and possible consequences.

"(b) Rights explained (§ 702.5).

"After giving the advisement required by rule 5.534, the court must advise those present of each of the following rights of the child:

"(1) The right to a hearing by the court on the issues raised by the petition;

"(2) The right to assert the privilege against self-incrimination;

"(3) The right to confront and to cross-examine any witness called to testify against the child; and

"(4) The right to use the process of the court to compel the attendance of witnesses on the child's behalf.

"(c) Admission of allegations; prerequisites to acceptance.

"The court must then inquire whether the child intends to admit or deny the allegations of the petition. If the child neither admits nor denies the allegations, the court must state on the record that the child does not admit the allegations. If the child wishes to admit the allegations, the court must first find and state on the record that it is satisfied that the child understands the nature of the allegations and the direct consequences of the admission, and understands and waives the rights in (b).

"(d) Consent of counsel--child must admit.

"Counsel for the child must consent to the admission, which must be made by the child personally.

"(e) No contest.

"The child may enter a plea of no contest to the allegations, subject to the approval of the court.

the rule does not specifically mention an admission coupled with a claim of innocence, we see no reason to treat such an admission differently from a no contest plea. (See *Alford, supra*, 400 U.S. at pp. 36-37 [noting the similarity of a no contest plea to a plea of guilty coupled with a claim of innocence, and finding no "constitutional significance" in the distinction].) Thus, we conclude that, like a plea of no contest, an admission coupled with a claim of innocence may be entered "subject to the approval of the court." (Cal. Rules of Court, rule 5.778(e).)

That the court has the power to approve such an admission necessarily implies that the court must not withhold approval arbitrarily. Here, the court made it clear that it had a blanket rule: "I don't take admissions from minors . . . who are

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"(f) Findings of the court (§ 702).

"On an admission or plea of no contest, the court must make the following findings noted in the minutes of the court:

"(1) Notice has been given as required by law;

"(2) The birthdate and county of residence of the child;

"(3) The child has knowingly and intelligently waived the right to a hearing on the issues by the court, the right to confront and cross-examine adverse witnesses and to use the process of the court to compel the attendance of witnesses on the child's behalf, and the right to assert the privilege against self-incrimination;

"(4) The child understands the nature of the conduct alleged in the petition and the possible consequences of an admission or plea of no contest;

"(5) The admission or plea of no contest is freely and voluntarily made;

"(6) There is a factual basis for the admission or plea of no contest;

"(7) Those allegations of the petition as admitted are true as alleged;

"(8) The child is described by section 601 or 602; and

"(9) In a section 602 matter, the degree of the offense and whether it would be a misdemeanor or felony had the offense been committed by an adult. If any offense may be found to be either a felony or misdemeanor, the court must consider which description applies and expressly declare on the record that it has made such consideration and must state its determination as to whether the offense is a misdemeanor or a felony. These determinations may be deferred until the disposition hearing.

"(g) Disposition.

"After accepting an admission or plea of no contest, the court must proceed to disposition hearing under rules 5.782 and 5.785."

admitting because it's in their best interest," and, "I do not do that. That is not what this court is about. I do not accept plea bargains because somebody believes that it's in their best interest to say they committed a crime. The minors have to actually admit that they committed a crime or be proven by facts and witnesses that they committed the crime. This is not adult court." Application of such a blanket rule, with no reference to the circumstances of the minor or the particular case, constitutes an erroneous failure to exercise discretion. (See generally *People v. Penoli* (1996) 46 Cal.App.4th 298, 303 ["[a]dherence to [standard] practice [in sentencing] constitute[s] an erroneous failure to exercise the discretion vested in the court by law"].) The error was prejudicial, in that the court sustained the allegation of felony grand theft person (as opposed to misdemeanor petty theft), and declared appellant a ward of the court (as opposed to not declaring appellant a ward and entering a disposition under Welfare and Institutions Code section 725, subdivision (a)).[4]

Respondent's contentions to the contrary are not persuasive.

Respondent notes that the principles underlying Penal Code section 1192.5, which permits a court to withdraw its approval of a plea at the time set for sentencing "in the light of further consideration of the matter," apply to juvenile proceedings. (See *In re Jermaine B.* (1999) 69 Cal.App.4th 634, 640.) Respondent argues that under such principles, the court had broad discretion to withdraw its approval of the disposition. We agree that, by analogy to Penal Code section 1192.5, the court had broad discretion to disapprove the disposition. But

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[4] Following oral argument, appellant notified this court that the juvenile court subsequently reduced the offense to a misdemeanor. Appellant filed a copy of a minute order so reflecting, and we take judicial notice of the order. Despite the reduction of the offense, the appeal is not moot, because appellant remains a ward of the court, whereas the disposition under section 725, subdivision (a), rejected by the juvenile court, contemplated that appellant would not be a ward of the court.

by the same analogy, it also had the duty to *exercise* its discretion and not withhold its approval arbitrarily. As held in *People v. Smith* (1971) 22 Cal.App.3d 25, 30-31: "Although it is within the discretion of the court [under Penal Code section 1192.5] to approve or reject the proffered offer, the court may not arbitrarily refuse to consider the offer." Here, the court applied a blanket rule, and did not exercise any true discretion in disallowing the disposition.

Respondent contends that the court could reasonably conclude, based on appellant's protestation of innocence, that there was no factual basis for the admission. But the record shows that the court did not conclude that there was no factual basis. As we have explained, the court applied its own per se rule.

Likewise unpersuasive is respondent's argument that the court gave appellant's case individualized consideration, because the court set aside the admission only after learning that appellant maintained his innocence. We disagree. It was *because* appellant maintained his innocence that the court applied its blanket rule and did not exercise individualized consideration.

Respondent argues that the court's practice of not accepting an admission unless accompanied by an admission of guilt furthers the rehabilitative goals of the juvenile justice system. (See *In re Julian R.* (2009) 47 Cal.4th 487, 496 ["Juvenile proceedings continue to be primarily rehabilitative"].) We agree that there may be circumstances in a particular case in which a court, in the exercise of its discretion, might reasonably conclude that the goals of the juvenile justice system would not be served by accepting the minor's admission unless it is accompanied by a factual admission of guilt. We disagree, however, that the court may withhold its approval based solely on the court's own belief that an admission should *never* be accepted in juvenile proceedings unless accompanied by an admission of factual guilt.

The proper remedy is a limited reversal of the order sustaining the petition and declaring appellant a ward of the court, and a remand for the court to exercise its discretion as to whether to approve the original disposition. If in the exercise of its discretion the court decides to approve the disposition, it may proceed accordingly. If it decides not to approve the disposition, then it shall reinstate the order sustaining the petition and declaring appellant a ward of the court.

DISPOSITION

The order sustaining the petition and declaring appellant a ward of the court is reversed, and the case is remanded to the juvenile court for the court to exercise its discretion as to whether to approve the original disposition. If the court decides to approve the disposition, it may proceed accordingly. If it decides not to approve the disposition, then it shall reinstate the order sustaining the petition and declaring appellant a ward of the court.

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WILLHITE, J.

We concur:

EPSTEIN, P. J. MANELLA, J.